



7 MAGISTRATE JUDGE J KELLEY ARNOLD

8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **AT TACOMA**

11 MICHAEL A JACKSON,

12 Plaintiff,

13 v

14 BRIAN GAIN, et al ,

Defendants.

15 NO. C01-263FDB

16 DEFENDANTS' ANSWER TO  
17 PLAINTIFF'S CIVIL RIGHTS  
18 COMPLAINT AND DEMAND  
19 FOR JURY TRIAL

20 COME NOW the Defendants, by and through their attorneys, CHRISTINE O  
21 GREGOIRE, Attorney General, and MICHAEL G. BALLNIK, Assistant Attorney General, and  
22 hereby submit their Answer to Plaintiff's Complaint

23 **I. PLACE OF CONFINEMENT**

24 1 Defendants admit that from April 5, 2001, to May 7, 2001, Plaintiff was  
25 incarcerated at the Washington Corrections Center in Shelton, Washington. Defendants deny  
26 that Plaintiff exhausted the administrative grievance process concerning the facts relating to this  
Complaint prior to bringing this action.

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CV 01-00263 #00000090

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## II. PARTIES

2 Defendants admit that the Plaintiff is Michael A. Jackson, Washington  
Department of Corrections Number 722278 Defendants admit that Plaintiff has named Dieter  
Burckhardt, Nancy Davies, Tracy Johnson, Eugene Ricker, Sharon Thach, James Tucker and  
Lawrence Turner as the Defendants in this action, and that these individuals are employed at the  
Washington Corrections Center in Shelton, Washington.

### III. STATEMENT OF THE CLAIM

In answer to page 1 of the **Claim** section of Plaintiff's Complaint.

3 Defendants deny that Corrections Officer Turner assaulted him in his cell while  
he was sleeping on March 27, 2001

4. Defendants admit that Corrections Officer Turner entered Plaintiff's cell, but deny that Corrections Officer Turner approached Plaintiff's bed and deny that Corrections Officer Turner was standing over the Plaintiff

5 Defendants deny that Corrections Officer Turner hit the Plaintiff in order to  
awaken him.

6 Defendants admit that Corrections Officer Turner informed Plaintiff that he could  
not remain in bed under the covers.

7. Defendants admit that no other correctional officer was present and that the Plaintiff had no cellmate at this time

8. Defendants deny that Plaintiff asked Corrections Officer Turner the reason he hit Plaintiff

1       9. Defendants admit that Corrections Officer Turner left the cell and closed the door  
2 behind him.

3       10. Defendants admit that Plaintiff met with Sergeant Ricker on March 28, 2001,  
4 regarding the alleged assault by Corrections Officer Turner

5       11. Defendants admit that Sergeant Ricker spoke with Corrections Officer Turner  
6 regarding Plaintiff's allegations.

7       12. Defendants are without sufficient information and belief to respond to, and  
8 therefore deny, the assertion that Plaintiff contacted the United States Department of Justice  
9 regarding the alleged assault

10       13. Defendants deny that they took any action in response to the Plaintiff's alleged  
11 letter to the United States Department of Justice.

12       14. Defendants admit that Sergeant Ricker and Custody Unit Supervisor Nancy  
13 Davies met in the unit Sergeant's Office with the Plaintiff on April 5, 2001.

14       15. Defendants deny that Sergeant Ricker ordered corrections officers to take down  
15 the Plaintiff and handcuff him at the time Plaintiff entered the office

16       16. Defendants admit that Plaintiff attempted to run out of the unit Sergeant's Office,  
17 but deny that corrections officers approached the Plaintiff before he attempted to run out of the  
18 office.

19       17. Defendants admit that Plaintiff went through the office door, but deny that the  
20 Plaintiff was knocked through the office door by the corrections officers.

1       18     Defendants are without sufficient information and belief to respond to, and  
2 therefore deny, any other allegations or assertions on page one of the Claim section of Plaintiff's  
3 Complaint.

4               In answer to **page 2 of the Claim** section of Plaintiff's Complaint:

5       19.    Defendants admit that Plaintiff was placed on the floor, but deny that Plaintiff was  
6 slammed to the floor and that unreasonable force was used to detain him.  
7

8       20.    Defendants deny that the Plaintiff was not informed to comply with their attempts  
9 to handcuff him by putting his hands behind his back.

10      21.    Defendants are without sufficient information or belief to respond to, and  
11 therefore deny, the assertion that other inmates were walking around and that those inmates were  
12 told to return to their cells  
13

14      22.    Defendants admit that the Plaintiff was taken to the medical infirmary for a  
15 routine use of force examination.

16      23.    Defendants deny that Plaintiff was caused any injury

17      24.    Defendants admit that Plaintiff then was placed in the Intensive Management  
18 Unit  
19

20      25.    Defendants deny that Plaintiff was retaliated against at any time.

21      26.    Defendants are without sufficient information and belief to respond to, and  
22 therefore deny, any other allegations or assertions on page two of the Claim section of Plaintiff's  
23 Complaint  
24

25      ///  
26      ///

1           In answer to **page 3** of the **Claim** section of Plaintiff's Complaint:

2           27.    Defendants admit that an administrative segregation hearing was held on April 9,  
3           2001 to determine the Plaintiff's custody classification level.

4           28.    Defendants deny that Plaintiff was retaliated against at any time

5           29.    Defendants are without sufficient information and belief to respond to, and  
6           therefore deny, any other allegations or assertions on page three of the Claim section of  
7           Plaintiff's Complaint not specifically admitted.

9           In answer to **page 4** of the **Claim** section of Plaintiff's Complaint:

10          30.    Defendants admit that there was another administrative hearing on or about April  
11           23, 2001, and that Mr. Tucker and Mr. Johnson were present at this hearing.

12          31.    Defendants admit that Plaintiff initially was referred to the Washington State  
13           Penitentiary mental health unit.

15          32.    Defendants admit that Plaintiff stated that he did not want to be transferred to the  
16           Washington State Penitentiary.

17          33.    Defendants are without sufficient information and belief to respond to, and  
18           therefore deny, any other allegations or assertions on page four of the Claim section of Plaintiff's  
19           Complaint not specifically admitted.

21           In answer to **page 5** of the **Claim** section of Plaintiff's Complaint:

22          34.    Defendants deny that Acting Superintendent Carol Porter told the Plaintiff on  
23           April 26, 2001, that he did not err in refusing to get on the bus to go to the Washington State  
24           Penitentiary that morning

1       35    Defendants admit that Plaintiff subsequently was referred to the Monroe  
2 Corrections Center Special Offender Center in Monroe, Washington.

3       36.    Defendants deny that Plaintiff has been harassed or retaliated against.

4       37.    Defendants are without sufficient information and belief to respond to, and  
5 therefore deny, any other allegations or assertions on page five of the Claim section of Plaintiff's  
6 Complaint.

7       38.    Defendants deny all other allegations made by Plaintiff, except those specifically  
8 admitted above.

10                   **IV. CLAIMS FOR RELIEF**

11       39    Defendants deny that Plaintiff is entitled to any of the relief set forth in the Relief  
12 section of his Complaint.

14                   **V. AFFIRMATIVE DEFENSES**

15                   **BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, THE  
16 DEFENDANTS AFFIRMATIVELY ALLEGE THAT:**

17       40    The actions of prison officials further legitimate penological goals and are  
18 therefore constitutional even when infringing upon fundamental constitutional rights.

19       41.    The Plaintiff failed to exhaust the administrative grievance process concerning all  
20 facts relating to the Complaint prior to bringing this action.

22                   Wherefore, having fully answered the Complaint of the Plaintiff and having stated  
23 affirmative defenses, Defendants pray for judgment dismissing the Complaint and action with  
24 prejudice, directing that Plaintiff take nothing thereby and awarding the Defendants costs and  
25 reasonable attorney's fees herein.

Should the matter proceed to trial, Defendants demand that all issues of fact be determined by a jury.

DATED this 4 day of September, 2001.

CHRISTINE O GREGOIRE  
Attorney General

~~MICHAEL G. BALLNIK~~, WSB# 27422  
Assistant Attorney General  
Attorney for Defendants



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7 MAGISTRATE JUDGE J KELLEY ARNOLD

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 MICHAEL A JACKSON,

NO C01-263FDB

11 Plaintiff,

AFFIDAVIT OF SERVICE BY  
MAILING

12 v.

13 BRIAN GAIN, et al ,

14 Defendants.

15 STATE OF WASHINGTON )  
16 County of Thurston ) ss.

17 BETTY A. GOOD, being first duly sworn on oath deposes and says:

18 That I am a citizen of the United States, over the age of eighteen years, and competent to be  
19 a witness herein.

20 That on the 4<sup>th</sup> day of September 2001, I deposited in the United States mail, postage  
21 prepaid, addressed as follows

22 MICHAEL A JACKSON, #722278  
23 MONROE CORRECTIONAL COMPLEX  
24 SPECIAL OFFENDER CENTER  
PO BOX 514  
MONROE WA 98272

25

26

AFFIDAVIT OF SERVICE BY  
MAILING

1

ATTORNEY GENERAL OF WASHINGTON  
Criminal Justice Division  
PO Box 40116  
Olympia, WA 98504-0116  
(360) 586-1445

1 copies of the following document(s): DEFENDANTS' ANSWER TO PLAINTIFF'S CIVIL  
2 RIGHTS COMPLAINT AND DEMAND FOR JURY TRIAL and AFFIDAVIT OF SERVICE BY  
3 MAILING

4 *Betty A. Good*  
5

6 SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of September 2001

7 *Lisa A. Oekerman*  
8

9 Lisa A. Oekerman (PRINTEDNAME)  
10 Notary Public in and for the  
11 State of Washington My  
12 Commission Expires: 1-27-03

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